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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANTHONY UDOM,
12 Detainee No. A023503206,

13 Plaintiff,

14 vs.
15

16 CORRECTIONS CORPORATION OF
17 AMERICA; K. PERRY; TRICK;
18 IWUABA,

19 Defendants.
20

Civil No. 12cv1073 LAB (MDD)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
[ECF No. 2];**

AND

**(2) SUA SPONTE DISMISSING
COMPLAINT FOR FAILING
TO STATE A CLAIM PURSUANT TO
28 U.S.C. § 1915(e)(2)**

21 Anthony Udom (“Plaintiff”), currently detained at the San Diego Correctional Facility
22 located in San Diego, California, and proceeding pro se, has filed a civil action. Plaintiff has not
23 prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to
24 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

25 **I.**

26 **MOTION TO PROCEED IFP**

27 All parties instituting any civil action, suit or proceeding in a district court of the United
28 States, except an application for writ of habeas corpus must pay a filing fee of \$350. See 28

1 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee
 2 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
 3 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, "[u]nlike other indigent
 4 litigants, prisoners proceeding IFP must pay the full amount of filing fees in civil actions and
 5 appeals pursuant to the PLRA [Prison Litigation Reform Act]." *Agyeman v. INS*, 296 F.3d 871,
 6 886 (9th Cir. 2002). As defined by the PLRA, a "prisoner" is "any person incarcerated or
 7 detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent
 8 for, violations of criminal law or the terms and conditions of parole, probation, pretrial release,
 9 or diversionary program." 28 U.S.C. § 1915(h). Under this definition, "an alien detained by the
 10 INS pending deportation is not a 'prisoner' within the meaning of the PLRA," because
 11 deportation proceedings are civil, rather than criminal in nature, and an alien detained pending
 12 deportation has not necessarily been "accused of, convicted of, sentenced or adjudicated
 13 delinquent for, a violation of criminal law." *Agyeman*, 296 F.3d at 886. Thus, because Plaintiff
 14 claims he was civilly detained pursuant to immigration or deportation proceedings, and not a
 15 "prisoner" as defined by 28 U.S.C. § 1915(h), the filing fee provisions of 28 U.S.C. § 1915(b)
 16 do not apply to him.

17 Accordingly, the Court has reviewed Plaintiff's affidavit of assets, just as it would for any
 18 other non-prisoner litigant seeking IFP status, *see* S.D. CAL. CIVLR 3.2(d), finds it is sufficient
 19 to show that Plaintiff is unable to pay the fees or post securities required to maintain this action,
 20 and hereby **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF
 21 No. 2].

22 II.

23 SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)

24 Any complaint filed by a person proceeding IFP is subject to sua sponte dismissal by the
 25 Court to the extent it contains claims which are "frivolous, malicious, fail to state a claim upon
 26 which relief may be granted, or seek monetary relief from a defendant immune from such relief."
 27 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam)
 28 (holding that "the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners."); *Lopez*

1 v. *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits,
 2 but requires a district court to dismiss an in forma pauperis complaint that fails to state a
 3 claim.”). “[W]hen determining whether a complaint states a claim, a court must accept as true
 4 all allegations of material fact and must construe those facts in the light most favorable to the
 5 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also Barren v. Harrington*,
 6 152 F.3d 1193, 1194 (9th Cir. 1998) (§ 1915(e)(2) “parallels the language of Federal Rule of
 7 Civil Procedure 12(b)(6).”).

8 As an initial matter, Plaintiff’s Complaint violates Rule 8 of the Federal Rules of Civil
 9 Procedure. Specifically, Rule 8 provides that in order to state a claim for relief in a pleading it
 10 must contain “a short and plain statement of the grounds for the court’s jurisdiction” and “a short
 11 and plain statement of the claim showing that the pleader is entitled to relief.” FED.R.CIV.P.
 12 8(a)(1) & (2). Here, Plaintiff’s entire Complaint is just two pages and contains no factual
 13 allegations. If Plaintiff chooses to file an Amended Complaint, he must comply with Rule 8.

14 In addition, Plaintiff is in federal custody and seeks to hold purported federal actors liable
 15 for alleged civil rights violations. Thus, while the Court notes that while Plaintiff purportedly
 16 brings this action under § 1983, the Court will liberally construe his claims to arise under *Bivens*
 17 v. *Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388 (1971) because Plaintiff claims
 18 violations of his civil rights by a federal actors. *Bivens* established that “compensable injury to
 19 a constitutionally protected interest [by federal officials alleged to have acted under color of
 20 federal law] could be vindicated by a suit for damages invoking the general federal question
 21 jurisdiction of the federal courts [pursuant to 28 U.S.C. § 1331].” *Butz v. Economou*, 438 U.S.
 22 478, 486 (1978). “Actions under § 1983 and those under *Bivens* are identical save for the
 23 replacement of a state actor under § 1983 by a federal actor under *Bivens*.” *Van Strum v. Lawn*,
 24 940 F.2d 406, 409 (9th Cir. 1991).

25 To state a private cause of action under *Bivens*, Plaintiff must allege: (1) that a right
 26 secured by the Constitution of the United States was violated, and (2) that the violation was
 27 committed by a federal actor. *Id.*; *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 624
 28 (9th Cir. 1988). *Bivens* provides that “federal courts have the inherent authority to award

1 damages against federal officials to compensate plaintiffs for violations of their constitutional
 2 rights.” *Western Center for Journalism v. Cederquist*, 235 F.3d 1153, 1156 (9th Cir. 2000).
 3 However, a *Bivens* action may only be brought against the responsible federal official in his or
 4 her individual capacity. *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1988). *Bivens*
 5 does not authorize a suit against the government or its agencies for monetary relief. *FDIC v.*
 6 *Meyer*, 510 U.S. 471, 486 (1994); *Thomas-Lazear v. FBI*, 851 F.2d 1202, 1207 (9th Cir. 1988);
 7 *Daly- Murphy*, 837 F.2d at 355.

8 Nor does *Bivens* provide a remedy for alleged wrongs committed by a private entity
 9 alleged to have denied Plaintiff’s constitutional rights under color of federal law. *Correctional*
 10 *Services Corp. v. Malesko*, 534 U.S. 61, 69 (2001) (“[T]he purpose of *Bivens* is to deter *the*
 11 *officer*,’ not the agency.”) (quoting *Meyer*, 510 U.S. at 485); *Malesko*, 534 U.S. at 66 n.2
 12 (holding that *Meyer* “forecloses the extension of *Bivens* to private entities.”). Accordingly,
 13 Plaintiff cannot bring claims of civil rights violations against the Corrections Corporation of
 14 America.

15 While not entirely clear, it appears that Plaintiff also seeks to hold Defendants liable for
 16 alleged tort violations. If Plaintiff intends to bring this action pursuant to the Federal Torts
 17 Claim Act (“FTCA”), he fails to name the United States as a Defendant. The Federal Tort
 18 Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-2680, provides that the sovereign immunity
 19 of the United States is waived for suits resulting from torts “caused by the negligent or wrongful
 20 act or omission of any employee of the Government ... under circumstances where the United
 21 States, if a private person, would be liable to the claimant in accordance with the law of the place
 22 where the act or omission occurred.” 28 U.S.C. § 1346(b). Thus, Plaintiff’s FTCA claims fail
 23 because the United States is the only proper defendant for an FTCA claim against a federal
 24 employee for actions taken within the scope of their employment. *See Ward v. Gordon*, 999
 25 F.2d 1399, 1401 (9th Cir. 1993).

26 If Plaintiff is seeking to bring claims under California state law, the Court declines to
 27 exercise supplemental jurisdiction over these pendent state claims at this time because Plaintiff
 28 cannot identify a violation of federal law. *See* 28 U.S.C. § 1367(c)(3) (“The district court may

1 decline to exercise supplemental jurisdiction over a claim under subsection (a) if ... the district
 2 court has dismissed all claims over which it has original jurisdiction.”); *United Mine Workers*
 3 *of America v. Gibbs*, 383 U.S. 715, 726 (1966) (“if the federal claims are dismissed before trial,
 4 ... the state claims should be dismissed as well.”); *Acri v. Varian Assoc., Inc.*, 114 F.3d 999,
 5 1000 (9th Cir. 1997) (“[O]nce judicial power exists under § 1367(a), retention of supplemental
 6 jurisdiction over state law claims under 1367(c) is discretionary.”)

7 Accordingly, the Court must DISMISS Plaintiff’s Complaint for all the reasons set forth
 8 above but will provide Plaintiff with the opportunity to amend his Complaint to correct the
 9 deficiencies of pleading identified by the Court.

10 III.

11 CONCLUSION AND ORDER

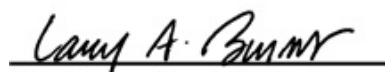
12 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

13 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is
 14 **GRANTED**.

15 **IT IS FURTHER ORDERED** that:

16 2. Plaintiff’s Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
 17 § 1915(e)(2)(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
 18 Order is filed in which to file a First Amended Complaint which cures the deficiencies of
 19 pleading noted above. Plaintiff’s Amended Complaint must be complete in itself without
 20 reference to the superseded pleading. *See* S.D. CAL. CIVLR 15.1. Defendants not named and
 21 any claim not re-alleged in the Amended Complaint will be considered waived. *See King v.*
 22 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). If Plaintiff fails to file an Amended Complaint
 23 within 45 days, this case shall remain dismissed for failing to state a claim pursuant to 28 U.S.C.
 24 § 1915(e)(2).

25 DATED: May 14, 2012

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27 **HONORABLE LARRY ALAN BURNS**
 28 United States District Judge